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No. 94-1203

In the

# Supreme Court of the United States

October Term, 1994

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,
Petitioners,

v.

STATE OF NEW JERSEY,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of New Jersey

## BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Do two New Jersey income tax statutes which establish separate tax rates for individuals and married persons and require married persons to file their income tax returns according to how they filed their federal income tax returns, violate federal equal protection and due process guarantees?

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## BRIEF IN OPPOSITION

## COUNTERSTATEMENT OF THE CASE

Petitioners seek a writ of certiorari to challenge a determination of the New Jersey Supreme Court denying their petition for certification and affirming the New Jersey Appellate Division's decision.

Specifically, petitioners contend that establishing separate tax rate tables based on taxpayers' filing status and requiring married individuals to file their Gross Income Tax ("GIT") returns depending on how they filed their federal income tax returns violate their constitutional guarantees of equal protection and due process. The Appellate Division of New Jersey's Superior Court and the Tax Court correctly rejected petitioners' argument and applied a rational basis test to uphold the constitutionality of the two New Jersey

GIT statutory provisions. The courts found that the GIT statutes are legitimate economic statutes and that administrative convenience alone supports finding that the GIT statutes are constitutional. The New Jersey Supreme Court chose not to hear an appeal from the Appellate Division's judgment.

Notably, this Court refused to consider a similar challenge by petitioner to the Internal Revenue Code's income tax rates in Rinier v. United States of America, Civil Action No. 92-1594 (D.N.J. 8/21/92), aff'd, 995 F.2d 218 (3d Cir.), cert. denied, ___ U.S. ___, 114 S.Ct. 306, rehearing denied ___ U.S. ___, 114 S.Ct. 623 (1993). There plaintiffs argued that since the Internal Revenue Code taxes married and unmarried persons at different rates, creating in effect a marriage tax penalty, the different rates violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The United States District Court concluded that the so-called marriage tax penalty does not violate plaintiffs' rights under the Fourteenth Amendment. In reaching its decision, the federal court reasoned that "[w]hile plaintiff makes several reasonable arguments on policy and sociological grounds, ... they have little legal bearing on this issue" (slip op. at p. 2). The Congress is free to enact economic statutes to raise revenue for the government. New Jersey's GIT statutes are constitutional as well.

## I. Statutory Background

In 1976, the New Jersey Legislature enacted the New Jersey GIT Act, N.J. Stat. Ann. §54A:1-1 et. seq. (West 1986) ("N.J.S.A."), to raise revenue for property tax relief. The Legislature provided in N.J.S.A. 54A:8-3.1(b) that married persons must file their GIT return according to how they filed their federal return. Specifically, if they filed a joint federal income tax return, they would have to file a

joint GIT return and if they filed a separate federal income tax return they would have to file a separate GIT return.

In 1982 the Legislature enacted a progressive tax rate scheme. The tax rates ranging from 2% to 3.5% on gross income applied to all taxpayers regardless of their filing status. In 1990 the Legislature amended N.J.S.A. 54A:2-1. See 1990 N.J. Laws c. 61, §12, effective as of January 1, 1991. The amendment increased the existing GIT rates and established tax rate tables with separate rate schedules designated by filing status. The Legislature enacted the amendment to "make that tax more consistent with taxpayers' ability to pay." [Assembly Appropriations Committee Statement for Assembly Bills 3607 and 3609].[1]

## II. History of the Case

Petitioners, a married couple, chose to file a joint federal personal income tax return. Accordingly, under N.J.S.A. 54:8-3.1 they filed a joint New Jersey GIT return.

On April 14, 1992, petitioners filed a complaint against the State of New Jersey challenging the constitutionality of N.J.S.A. 54A:2-1 and N.J.S.A. 54A:8-3.1. On July 10, 1992, the Law Division of the Superior Court granted the State's motion to transfer the case from the Law Division to the Tax Court. On August 14, 1992, petitioners moved before the Tax Court for a declaratory judgment that the GIT statutes in issue violated the due process and equal protection clauses of the United States Constitution. The State filed a cross-motion for summary judgment.

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[1] Recently, the Legislature amended N.J.S.A. 54A:2-1 to reflect a five per cent decrease in GIT rates for tax years 1994 and after. Since the decrease applies uniformly, the Appellate Division correctly noted that the amendment has no effect on petitioners' case.

On October 23, 1992, ruling in the State's favor, the Tax Court found that petitioner[s] have "failed to establish that they [two GIT statutes in issue] are unconstitutional". The Tax Court applied a rational basis test to determine the constitutionality of the GIT statutes. (Pa[2]21) First, the Tax Court held that the legislative purpose behind the GIT statutory provisions was legitimate (Pa20). Second, the Tax Court held that the GIT provisions were rationally related to the accomplishment of a legitimate governmental purpose (Pa20). The Tax Court reasoned that N.J.S.A. 54A:2-1 and N.J.S.A. 54A:8-3.1 do "not in any way discourage or penalize marriage nor was that the intent of the Legislature" (Pa20), and upheld the GIT statutes.

On November 30, 1992, plaintiffs-petitioners filed a Notice of Appeal from the Tax Court's Order dated October 30, 1990, upholding the statutory provisions.

In a comprehensive and well reasoned opinion dated May 4, 1994, the Appellate Division upheld the constitutionality of the New Jersey GIT statutes. The Appellate Division rejected petitioners' argument that married persons are a suspect class entitling them to the application of strict scrutiny to analyze the tax statutes. The Appellate Division correctly found that "[g]overnment regulations affecting marriage are not subject to strict scrutiny simply because the right to marry is a fundamental right", [citation omitted] (Pa8). The GIT statutes do not directly burden a couple's decision to marry.

The Appellate Division also held that the correct standard of review for the tax statutes in issue was a rational basis standard, requiring only that there be some rational nexus between the state action and the legitimate state interest sought to be achieved. The Appellate Division then

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[2] "Pa" refers to the appendix petitioners filed with their petition for writ of certiorari.

defined the issue as "whether the requirement that joint state returns be filed when federal joint returns are filed has a rational nexus with the goal the State seeks to achieve" (Pa12). In other words, "whether there is any conceivable state of facts which would afford a rational basis for the classification." Ibid.

Since the GIT Act was enacted to raise $1.25 billion to fund programs for permanent property tax reform, the Appellate Division found that its purpose is legitimate. Furthermore, the Appellate Division found that having New Jersey taxpayers use the same filing status as they use when filing their federal tax returns was justified because it increased uniformity in revenue-collecting procedures between the state and federal government (Pa12-13). In fact, the Appellate Division emphasized that "administrative convenience alone justifies the [statute]" (Pa13). The Appellate Division correctly recognized that the "fact that there may be an adverse tax consequence to some married couples arising from the marital-status classification does not render the tax scheme irrational." "So long as the law has a reasonable basis, it will not offend the...Constitution" (Pa13). The Appellate Division concluded by noting that "[w]e are entirely satisfied that under the rational-basis analysis, plaintiffs have failed to 'refute all possible rational bases for the differing treatment' among classes under the legislation," [citation omitted] (Pa18).

Petitioners filed a Petition for Certification to the New Jersey Supreme Court. On October 11, 1994 the New Jersey Supreme Court denied the petition.

## SUMMARY OF THE ARGUMENT

The New Jersey courts correctly applied a rational basis test to uphold the constitutionality of the gross income tax statutes. The established caselaw overwhelmingly proves that the New Jersey tax statutes do not run afoul of the due process and equal protection standards. The New Jersey courts properly interpreted the decision in Hoeper v. Tax Commission of Wisconsin, 284 U.S. 201 (1931). Additionally, the New Jersey courts' decisions do not conflict with a Kansas County District decision in Peden v. State of Kansas, 93 CV 415 (District Court of Shawnee County 1994). The case is distinguishable and, furthermore, even if on point, a conflict between a state trial court and a state supreme court of last resort is not the type of conflict requiring the United States Supreme Court to decide whether to review a case. The conflict must be between two state courts of final jurisdiction, before this Court will even consider whether to grant certiorari. Sup. Ct. R. 10.1(b), United States v. Oregon, 366 U.S. 643, 645 (1961). Finally, the New Jersey Law Against Discrimination is irrelevant to an analysis of whether gross income tax statutes are constitutional.

## ARGUMENT

**THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE N.J.S.A. 54A:2-1 AND N.J.S.A. 54A:8-3.1 DO NOT VIOLATE THE FEDERAL EQUAL PROTECTION AND DUE PROCESS GUARANTEES SINCE THE TAX STATUTES ARE RATIONALLY RELATED TO LEGITIMATE STATE PURPOSES.**

Petitioners maintain that the petition for writ of certiorari should be granted because the lower courts erred by applying a rational basis test instead of a strict scrutiny test in analyzing whether the GIT statutes in issue are constitutional. Specifically, petitioners claim that the lower courts misinterpreted the decision in Hoeper v. Tax Commission of Wisconsin, 284 U.S. 206 (1931), and that the decision in Peden v. Kansas, 93 CV 415 (Kansas District Court 1994), conflicts with New Jersey courts' rulings. Petitioners also contend that the New Jersey Law Against Discrimination, ("LAD"), N.J.S.A. 10:5-1 to 42, requires the courts to apply a strict scrutiny test, not a rational basis test, to taxing statutes that make any use whatsoever of marital status. Petitioners are wrong on all three claims.

As will be shown below, the petition for writ of certiorari should be denied. The fatal flaw in petitioners' argument is that they fail to understand that while the right to contract marriage is a fundamental right, all state regulations concerning marriage are not subject to strict scrutiny merely because the statutory provision in some way distinguishes based on the incident of marriage. This is particularly so in the context of economic regulation. Hence, the New Jersey courts correctly applied a rational basis test to determine if the GIT statutes were constitutional.

A. The New Jersey Courts Correctly Applied a Rational Basis Test to Determine the Constitutionality of the Gross Income Tax Statutes.

Petitioners contend that a strict scrutiny test should be used because married persons are a suspect class. Petitioners' argument is entirely without merit.

The New Jersey courts properly recognized that the key in determining whether a statute impermissibly infringes on the right to marry is whether the statute directly interferes with the decision of the two persons deciding whether to marry. See Zablocki v. Redhail, 434 U.S. 374, 386 (1978) (A reasonable governmental regulation that does not significantly interfere with decisions to marry may legitimately be imposed); Califano v. Jobst, 434 U.S. 47, 53-54 (1977) (Court applied the rationality test to uphold the use of marital status to determine eligibility for social security disability benefits); Mapes v. United States, 576 F.2d 896, 901 (Ct. Clms. 1978), cert. denied, 439 U.S. 1046 (1978) (The obstacle to marriage must be a direct one, i.e., one that operates to preclude marriage entirely for a certain class of people). Therefore, since the GIT statutory provisions in issue do not infringe on the right to marry, the lower courts properly found that the correct test to determine whether the statutes were constitutional is the rational basis test.

Under the rational basis test, the crucial questions in evaluating petitioners' equal protection challenge are whether the GIT statutory provisions have a legitimate purpose and whether there is any conceivable set of facts which affords a rational basis for the classification. The legislative purpose of the GIT Act is set forth in the legislative history of the original GIT Act enacted in 1976. The legislative history of N.J.S.A. 54A:2-1 establishes that the purpose of the GIT is to raise revenue for property tax

relief. To raise the revenue, the Legislature established separate tax rates consistent with taxpayers' ability to pay. The Appellate Division found that raising revenue for property tax relief, and thereby alleviating the tax burden for homeowners, is a legitimate, indeed vital, governmental purpose.

Since the purpose behind the GIT statutes is legitimate, all that need be shown to sustain the requirement that married persons file their GIT returns as they filed their federal returns is a conceivable set of facts that may have motivated the Legislature. The Appellate Division found that in this case "administrative convenience [for the Division of Taxation] alone justifies the Legislature's classification by marital status" (Pa13). This requirement is further valid because it increases uniformity in revenue collecting procedures between the state and federal government and permits using the same auditing process for both taxing agencies. (Pa13).

Moreover, New Jersey adopts the same measure of a taxable year used by the federal government under N.J.S.A. 54A:2-1. These examples easily overcome petitioners' contention that administrative convenience is not a justification for the filing requirement.

In sum, the GIT statutory provisions and the classifications they contain are rationally related to the accomplishment of a legitimate governmental purpose and were properly upheld by the Appellate Division. No further review is warranted.

B. The New Jersey Courts Correctly Interpreted the Decision in Hoeper.

Petitioners claim that the lower courts misinterpreted the decision in Hoeper v. Tax Commission of Wisconsin, supra, 284 U.S. 206. Contrary to petitioners' contention,

the New Jersey courts correctly analyzed Hoeper and found it distinguishable.

The Hoeper case concerns taxpayers' constitutional challenge to a Wisconsin tax law requiring aggregation of spouses' separate incomes. The combined incomes were then taxed at rates higher than would apply if the taxpayers were single and filed separately. Another section of the Wisconsin statute allowed the filing of separate returns, but the tax was still computed on the joint income.

On appeal to the United States Supreme Court, a married taxpayer claimed that the Wisconsin tax system attributing his wife's income to him was arbitrary and discriminatory. After reviewing Wisconsin's laws on the status of a married woman's right to property, providing that a husband had no right to his wife's income, a majority of the Supreme Court held that since the Wisconsin tax law measured, "the tax on one person's property or income by reference to the property or income of another," it violated the principles of due process. Id. 284 U.S. at 215.

The New Jersey courts properly found that the New Jersey GIT Act contains no such compulsory income aggregation provision. The Appellate Court distinguished the Hoeper case by finding that "[t]he Wisconsin law in Hoeper provided no alternative to that of taxing combined income; in the New Jersey statutory scheme married taxpayers have a choice" (Pa17). Hence, married taxpayers may choose to file separate returns and thus avoid "attribution" of their income to the income of their spouse. Any aggregation of the two spouses' income on a federal and New Jersey gross income tax joint return is a voluntary matter. The Appellate Division concluded by emphasizing that "[t]he point is that it is their choice to make" (Pa18).

Petitioners suggest that filing a joint federal return is not voluntary because generally couples will pay a greater

tax if they file a separate federal return. The Appellate Division correctly ruled that "[t]he fact that there may be an adverse tax consequence to some married couples arising from marital-status classification does not render the tax scheme irrational" (Pa14).

Petitioners' complaint is with the Legislature, not the Judiciary. If the Legislature chooses to amend either N.J.S.A. 54A:2-1 or N.J.S.A. 54A:8-3.1 it can do so. But the laws as presently written do not violate the United States Constitution.

C. The Kansas County District Court's Decision in Peden v. State Does Not Conflict With the New Jersey Courts' Decisions.

Petitioners suggest that the decision in the Kansas County District Court, Peden v. State, conflicts with the New Jersey Appellate Division's decision. This argument is also without merit.

In determining whether to exercise its discretionary certiorari jurisdiction, the Court considers whether a conflict exists between decisions of the highest courts of two or more states on a federal question. Sup. Ct. R. 10.1(b). Here, the alleged conflict is between a Kansas lower court and the New Jersey Appellate Division. Clearly, this is not the type of conflict requiring this Court to decide whether to grant certiorari under Sup. Ct. R.10.1(b). The conflict must be between two state courts of final jurisdiction. United States v. Oregon, 366 U.S. 643, 645 (1961).

Even if the Peden case were from another state court with final jurisdiction, the Peden decision is distinguishable from the decision in this matter because the Kansas gross income tax scheme has different top rates for individuals and married individuals.

In Peden, the issue was whether Kansas can tax individuals at income tax rates exceeding the highest rates for married individuals. In Kansas individual taxpayers are subject to rates ranging from 4.4% to 7.75% and married individuals are subject to rates ranging from 3.5% to 6.45%, Kansas Stat. Ann. §79-32,110 (1993). Thus, married individuals are never subject to a higher rate than 6.45% while individuals are taxed at a high rate of 7.75%. The Kansas district court concluded that the Kansas taxing scheme is unconstitutional because it requires unmarried individuals to pay income tax at a rate exceeding the top rate for married individuals.

In stark contrast, under the New Jersey statutes, the top individual rate is not higher than the highest rate applicable to married individuals. New Jersey has the same range of tax rates, (2% to 7%) for all taxpayers whether single or married. Under New Jersey GIT statutes, married individuals are taxed at a higher rate because of their aggregate income not because one tax structure is higher than the other. The Appellate Division correctly noted that the consequence of filing a joint state tax return is that taxpayers' aggregate income will be subject to a higher tax rate. The New Jersey GIT Act has the same range of tax rates, but different tax classifications, individuals and married.

Courts have consistently upheld the classification between married and single persons for tax purposes. For example, in Kellems v. Comm'r, 58 T.C. 556 (1972), aff'd 474 F.2d 1399 (2d Cir. 1973), the taxpayer argued that the higher income tax rates applicable to single persons compared to married individuals was an unconstitutional classification and, among other problems, violated the Equal Protection Clause of the Fourteenth Amendment. The Second Circuit and United States Tax Court found a rational basis for the distinction between married and single persons

in applying the rates of taxation. The Tax Court noted that "Congress was within the bounds of its constitutional role since it is conceivable Congress believed that married persons generally have greater financial burdens than single persons." 58 T.C. at 559. The court reasoned that the recognition of such greater financial burdens is consistent with taxation based on the ability to pay which has long been an important objective of the income tax scheme. Id.

Similarly, the Oklahoma Supreme Court has held that a disparity between the tax rates applied to married individuals filing jointly and other taxpayers does not violate the Equal Protection Clause. Sowders v. Oklahoma Tax Comm'n., 552 P.2d 698 (Okla. 1976). In Sowders, taxpayer asserted that the classification based upon marital status violated the Fourteenth Amendment of the United States Constitution. The court phrased the single issue before it as whether the Oklahoma Legislature had a rational basis for the distinction drawn between married and single persons for purposes of the applicable rates of taxation. Id. at 699. The court found that there was no equal protection problem with the disparity in tax rates because a rational basis exists for the disparity. The rational basis was the classification based upon the different financial burdens between married individuals and single filers.

Furthermore, the Appellate Division also correctly found that other state courts have sustained tax provisions which "resulted in enhanced tax liability to married couples" (Pa15). See Klein v. Iowa Dep't of Revenue & Finance, 451 N.W.2d 837, 842-43 (Iowa 1990), cert. denied, 498 U.S. 852 (1990); (Iowa statute requiring spouses filing separate state returns to use standard deductions if either chooses to do so does not violate equal protection); Roberts v. State Tax Comm'n, 277 N.E.2d 499, 502-03 (Mass. 1972) (state statute which required married taxpayers to file joint returns in order to obtain refund did not deprive

taxpayer of equal protection even though statute permitted divorced or legally separated persons to file return individually and obtain refund) (Pa15-16). The Appellate Division decision is thus completely consistent with other state and federal precedents.

In short, the Peden case does not present a conflict requiring this Court to decide whether to grant certiorari because this decision does not conflict with a decision of the highest court of another state as required under Sup. Ct. R. 10.1(b). The New Jersey taxing scheme follows the established caselaw from all state and federal appellate courts.

D. The New Jersey Law Against Discrimination is Irrelevant to An Analysis of Whether Gross Income Tax Statutes are Constitutional.

Petitioners claim that the New Jersey courts erred by not applying the New Jersey Law Against Discrimination, ("LAD") N.J.S.A. 10:5-1 to 10:5-42, to analyze whether the GIT statutes violate equal protection and due process guarantees. This argument is equally without merit because this case raises the question of whether two state income tax statutes violate federal equal protection and due process guarantees. The Legislature did not enact the LAD to address rational distinctions based on marital status contained in taxing statutes. Since the LAD targets individual acts of discrimination in certain areas such as housing and employment, the New Jersey LAD is irrelevant to this analysis.

Federal courts determine the meaning of a fundamental right or a suspect class under the United States Constitution. The existence of the LAD cannot render inapplicable this Court's rationale in Zablocki v. Redhail; Califano v. Jobst; Mapes v. United States, supra, all ruling that classifications

based on marital status in taxing statutes do not infringe on a fundamental right. The New Jersey LAD has no bearing whatsoever on the constitutional analysis of taxing statutes. This case concerns a broad legislative classification in a taxing statute, not individual acts of discrimination.

In sum, the statutory classifications found in the GIT provisions at issue do not interfere directly or substantially with the right to marry. The New Jersey courts properly applied a rational basis test to determine the constitutionality of the GIT statutes and no further review in this Court is necessary.

## CONCLUSION

For the reasons set forth above, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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